(9)

No. 06-571

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 2007

MICHAEL A. WATSON, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari Filed October 23, 2006
Certiorari Granted February 26, 2007

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
(BATON ROUGE)

CRIMINAL DOCKET FOR CASE #:
3:04-cr-00186-FJP-DLD-ALL

Filing Date	#	Docket Text
		* * * * *
11/15/2004 (p.11)	1	COMPLAINT as to Michael A. Watson [3:04-m-75] (sah) (Entered: 11/15/2004)
		* * * * *
12/1/2004 (p.59)	9	INDICTMENT as to Michael A. Watson (1) count(s) 1, 2, 3 (Preliminary Examination cancelled) (sah) (Entered: 12/6/2004)
		* * * * *
12/16/2004		PLEA of Not Guilty. Michael A. Watson (1) count(s) 1, 2, 3; Court accepts plea (nlt) (Entered: 12/17/2004)
		* * * * *
12/17/2004	12	Minute entry as to Michael A. Watson: 12/16/04. 5A and Arraignment held * * * not guilty plea entered ... dft released on previous conditions (signed by Mag. Judge Christine Noland) (nlt) (Entered 12/17/2004)

		* * * * *
3/30/2005	33	MINUTE ENTRY for proceedings held before Judge Frank J. Polozola: Re-arraignment as to Michael A. Watson held on 3/30/2005. Plea agreement filed into record. Plea entered by Michael A. Watson (1) Guilty Count Complait 1, 2, 3 ... Court accepts the GUILTY PLEA .. Cout orders a PSR ... Dft remanded to the custody of the USM (Court Reporter E. Champion) (SAH,) (Entered: 4/1/2005)
3/30/2005	34	PLEA AGREEMENT filed into record as to Michael A. Watson (SAH,) (Entered: 4/1/2005) * * * * *
11/17/2005 (p. 193)	48	MINUTE ENTRY for proceedings held before Judge Frank J. Polozola: Sentencing and a hearing on dft's objection to presentence report. held on 11/17/2005 as to Michael A. Watson ... The Court imposes sentence. The defendant advised the Court that he would like to enter a Notice of Appeal ... Dft remanded to the custody of the USM (Court Reporter E. Champion) (SAH,) (Entered: 11/30/2005)
11/29/2005	47	NOTICE OF APPEAL of the judgment rendered on 11/17/05 by Michael A. Watson Copy of NOA mailed to USCA. K. Koch and R. Piedrahita Appeal Record due by 12/14/2005 (HCL) (Entered: 11/30/2005)

		* * * * *
11/29/2005	50	JUDGMENT as to Michael A. Watson (1), 1, 2, 3, IMPRISONMENT for a total term of 202 months on count 1, and 120 months on count 3 to run concurrently, 60 months on count 2 to run consecutively to counts 1 and 3, for a total term of 262 months. SUPERVISED RELEASE to run for a term of 3 years on counts 1, 2, and 3 to run concurrently ... ASSESSMENT of $300.00 ... (2 certified copies each sent to USM, USA, & USPO). Signed by Judge Frank J. Polozola on 11/29/2005. (SAH,) (Entered: 11/30/2005)
11/30/2005		Transmission of Notice of Appeal and Docket Sheet as to Michael A. Watson to US Court of Appeals re [47] Notice of Appeal. * * * (HCJ,) (Entered: 11/30/2005)
12/7/2005	51	TRANSCRIPT REQUEST by Michael A. Watson for proceedings held on 3/30/05 -- Guilty Plea before FJP, re [47] Notice of Appeal (HCJ,) (Entered: 12/7/2005)
12/14/2005	52	TRANSCRIPT filed as to Michael A. Watson for dates of Plea Hearing held on 3/30/05 before FJP, re [47] Notice of Appeal. Court Reporter EOC. (HCJ,) (Entered: 12/14/2005)
		* * * * *
8/17/2006	53	MANDATE of USCA (certified copy) as to Michael A. Watson re [47] Notice of Appeal. Judgement of the District Court is

		AFFIRMED. (HCJ.) (Entered: 8/22/2006)
9/29/2006	54	TRANSCRIPT of Sentencing Hearing as to Michael A. Watson held on 11/17/05 before Judge FJP. Court Reporter EOC. (HCJ.) (Entered: 09/29/2006)
3/29/2007	55	Transmitted Record on Appeal as to Michael A. Watson to US Supreme Court re [47] Notice of Appeal. Per request received from 5th Circuit Court of Appeals (HCJ.) (Entered: 03/29/2007)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

COURT OF APPEALS DOCKET #: 05-31094
USA v. Watson

Appeal from: Middle District of Louisiana, Baton Rouge

Filing Date	Docket Text
12/15/05	Direct criminal case docketed. NOA filed by Appellant Michael A. Watson. [05-31094] (dms) * * * * *
3/6/06	Appellant's Brief filed by Appellant Michael A. Watson. * * * (rsm) * * * * *
4/18/06	Appellee's Brief filed by Appellee USA. * * * (gmr)
4/21/06	Record on appeal filed. SEALED: 2 envs. (1-PSI & SOR) (1-Doc #27). [05-31094] ROA ddl satisfied. (gmr)
5/18/06	Briefing Complete. [05-31094] Reply brief ddl canceled. (pok)
7/25/06	Opinion filed. Mandate pull date is 8/15/06. [05-31094] (rmf)
7/25/06	Judgment entered and filed. [05-31094] (rmf)

8/16/06	Mandate issued. Approved BOC Issued? (Y/N)?: n [05-31094] Mandate pull date satisfied. (ina)
8/16/06	Record on appeal returned to USDC. Volumes: 1 SEALED: 2 envs. * * * [05-31094] (ina)
11/17/07	Supreme Court notice that petition for certiorari was filed in 10/13/06 by Appellant Michael A. Watson. Supct No.: 06-571 [05-31094] (cav)
3/14/07	Supreme Court order received granting petition certiorari [5597970-1] by Appellant Michael A. Watson on 02/26/07. [05-31094] (cav)
3/28/07	Certified record on appeal transmitted to United States Supreme Court. 5th Cir. Vols: 1 DCt. Vols: 0 Supplemental Vols: 0 Exhibits: 0 [05-31094] (cmb)
3/28/07	Record on appeal requested from the district court for the Supreme Court. [05-31094] (cmb)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

INDICTMENT FOR DISTRIBUTION OF OXYCODONE HYDROCHLORIDE, USE OF A FIREARM DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME, AND POSSESSION OF A FIREARM BY A CONVICTED FELON

UNITED STATES OF AMERICA	: CRIMINAL NO.
	: 04-186-B-M3
versus	:
	: 21 U.S.C. § 841(a)(1)
MICHAEL A. WATSON	: 18 U.S.C. § 924(c)(1)(A)
	: 18 U.S.C. § 922(g)(1)

THE GRAND JURY CHARGES:

COUNT ONE

On or about November 12, 2004, in the Middle District of Louisiana, **MICHAEL A. WATSON**, defendant herein, knowingly and intentionally did distribute oxycodone hydrochloride, also known as OxyContin, a Schedule II controlled substance.

The above is a violation of Title 21, United States Code, Section 841(a)(1).

COUNT TWO

On or about November 12, 2004, in the Middle District of Louisiana, **MICHAEL A. WATSON**, defendant herein, knowingly

did use an Israeli Military Industries, Desert Eagle, .50 caliber semiautomatic pistol, bearing serial number 312000803, during and in relation to the drug trafficking crime described in Count One.

The above is a violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT THREE

On or about November 12, 2004, in the Middle District of Louisiana, MICHAEL A. WATSON, defendant herein, having been convicted of a crime punishable by imprisonment for a term exceeding one year (a felony), knowingly did possess:

a) A Ruger, Model 10/22, .22 caliber rifle, bearing serial number 236-06166;

b) A Ruger, Model 10/22, .22 caliber rifle, bearing serial number 249-27029;

c) A Winchester, Model 67, .22 caliber single-shot rifle;

d) A Bryco, Model 48, .380 caliber pistol, bearing serial number 559071; and

e) A Winchester, Model 37, 16 gauge single-shot shotgun,

which firearms were previously imported in interstate commerce.

The above is a violation of Title 18, United States Code, Section 922(g)(1).

UNITED STATES OF AMERICA, by

/s/
DAVID R. DUGAS
UNITED STATES ATTORNEY
MIDDLE DISTRICT OF LOUISIANA

/s/
ROBERT W. PIEDRAHTA
ASSISTANT U.S. ATTORNEY

A TRUE BILL

/s/
GRAND JURY FOREPERSON

12-01-04
DATE

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	:	
PLAINTIFF	:	CRIMINAL ACTION NO.
vs.	:	04-186-B
	:	MARCH 30, 2005
MICHAEL A. WATSON	:	
DEFENDANT	:	2:15 P.M.

TRANSCRIPT OF PLEA HEARING

BEFORE THE HONORABLE FRANK J. POLOZOLA

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE UNITED STATES OF AMERICA:

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REPORTED BY: ESTELLA O. CHAMPION, CRR, RDR.

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* * * * *

Q. Okay. Do you have any questions about your appeal rights?

MR. KOCH: Judge, there is one little, just unusual twist. I don't know if there is legal significance. But the defendant has reserved the right to appeal the sufficiency of

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the factual basis, and that's laid out in the first sentence there. That has to do with when you get into the stipulation of facts.

THE COURT: Thank you for telling me.

And Mr. Koch is right, there's one additional item you have reserved your right to appeal on, and I'm not sure -- I won't even accept a guilty plea unless there's a sufficient factual basis.

MR. KOCH: It's -- what it has to with, Judge, is there's a split in the circuits. Factually the charge has to do with Mr. Watson transferring drugs in exchange for a firearm. In all the circuits, if you trade a gun for drugs, that's a violation. In half the circuits, though, if you trade drugs for a gun, that's been found not to be under 924(c). In the Fifth Circuit it is.

THE COURT: Then this would be a conditional plea under Rule 11?

MR. PIEDRAHITA: No.

MR. KOCH: Judge, the law in this circuit is that factually what he has done falls within 924(c); no question about it.

THE COURT: I know. But it seems to me that what's happening here is, if you reserve your right to appeal whether or not there's a sufficient factual basis for the plea, then that's conditional -- that would be a conditional plea under

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Rule 11, because you're reserving the right to appeal. Because if I'm reversed, then it comes back, and he has a right, then, to withdraw his guilty plea and enter a not-guilty plea.

MR. PIEDRAHITA: Your honor, if you look under Rule 11(a), it goes on to say that, Conditional Plea, Rule 11(a)(2), it says: "With the consent of the Court and the government, defendant may enter a conditional plea -- which is what the Court is talking about -- plea of guilty or nolo contendere, reserving the right to have the appeal court review an adverse determination." There's been no adverse determination in this case.

THE COURT: Well, there's going to be an adverse

determination because, if I find there's a sufficient factual basis as a matter of law, and then they take an appeal, that's exactly what you're doing.

MR. PIEDRAHITA: If you read *adverse determination* to mean that the defendant has filed a motion or the defendant is objecting to the factual basis --

THE COURT: But I'm assuming that, under the terms of the plea agreement, you all have agreed that this is an issue that can be reserved for appeal, which is a conditional plea, no matter how you word it, I mean.

You know, if the government is satisfied --

MR. PIEDRAHITA: We're satisfied.

THE COURT: Let me put it this way: If the

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government is satisfied that this defendant has a right to appeal my decision saying that there's a sufficient factual basis for the plea, it has to be under Rule 11. There's no other way. Because otherwise you waive everything, all challenges to the sufficiency of the evidence and what have you, when you plead guilty. So it has to go up to the circuit as a Rule 11.

Otherwise, the guilty plea itself would wipe out any challenges to amount of proof, any challenges to like motions

to suppress. The only thing that you would reserve -- the only thing that you always could raise would be the Court didn't have jurisdiction. But that's not an issue here.

MR. PIEDRAHITA: Well, then, your Honor, the United States consents to -- and, of course, the Court has to as well under the rule -- but the United States consents to allowing the defendant the opportunity to appeal the sufficiency of the factual basis under --

THE COURT: We're only talking about Count 1.

MR. PIEDRAHITA: -- as to Count 1. I was going to continue, as to Count 1.

Under the Fifth Circuit, your Honor, the Fifth Circuit, as Mr. Koch has stated, allows that the factual basis that is set forth is indeed a conviction for 924(c) in the Fifth Circuit. It may happen that the en banc court may decide otherwise, or it may very well be that the Supreme Court may resolve the

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conflict. But to the extent --

THE COURT: Right now the law in the circuit would be that, if the facts presented that there were guns --

MR. KOCH: Drugs out, guns in.

THE COURT: -- drugs out, guns in, that a conviction in the Fifth Circuit.

MR. KOCH: Yes, sir.

THE COURT: And I'm bound by the Fifth Circuit law.

MR. KOCH: Yes, sir.

THE COURT: And the only way -- God bless you -- the only way this could ever be changed here would be, one, as you say, en banc decision; but Number 2, the Supreme Court, if the Supreme Court wanted to resolve a conflict between the circuits, if there are conflicts.

But, what I'm saying, I'm just trying to be fair.

MR. PIEDRAHITA: Yes, sir.

THE COURT: My opinion is that unless this goes up to the circuit as a Rule 11 conditional plea on Count 1, I don't think the Fifth Circuit would accept jurisdiction to consider that appeal because it would just be a waiver; because when you plead guilty, you're saying: "I'm guilty as a matter of law and facts." Because one of the questions I'm going to ask him is is he guilty: "Are you pleading guilty because you're in fact guilty of the charge?"

MR. PIEDRAHITA: We'll agree to that, your Honor.

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MR. KOCH: Judge, it has to do with Count 2, actually. It's the 924(c).

MR. PIEDRAHITA: Count 2.

THE COURT: Yes, it's Count 2. It's not one.

We'll make sure that the minute entry reflects -- I'm not going to oppose this. You know, I mean, my only concern in getting involved on this is -- and frankly, if the intent of the parties was to reserve your right to appeal, I think we ought to include Rule 11.

MR. PIEDRAHITA: Thank you.

THE COURT: Today has been a bad day for me. I've gotten 11(c) binding pleas, now a conditional plea. This is a true Section B day.

MR. PIEDRAHITA: Thank you.

THE COURT: I don't know what the next one is going to be, but in any event . . .

BY THE COURT:

Q: Do you understand on Count 2, even though you're pleading guilty, okay, and even though the law in the Fifth Circuit would support what I'm about ready to do in a few minutes, you and the government have agreed that you still can appeal on whether or not that law should be valid in this circuit only on the charge on Count 2? Do you understand that?

A: Yes, sir.

Q: And the Court -- I have discretion to say, "No.

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you can't do it. I won't accept the plea. You've got to go to trial on it." Or I can say, "I will agree to let you enter a conditional plea on Count 2 under Rule 11," and that's what I'm going to do. I'm going to let you reserve your right to appeal. And the only reason for the colloquy or discussion between me and your lawyers is I wanted to make that, if the intent of your lawyer and the government was to allow you to take the appeal, that the appropriate section of Rule 11 -- and I have to get it out - it's eleven – Did you just have it?

MR. PIEDRAHITA: Yes, sir.

THE COURT: 11(e)?

MR. PIEDRAHITA: 11, 11(a)(2), conditional plea.

THE COURT: 11(a)(2)?

MR. PIEDRAHITA: Yes, sir.

THE COURT: Okay. Thank you.

BY THE COURT:

Q. All right. Do you understand that? That's to your benefit.

A. Yes, sir.

Q. Okay. * * *.

* * * * *

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* * * * *

Q. Okay. Now, Paragraph 12, you all stipulated to certain facts.

Have you had a chance to read the provisions of paragraph 12? Because these are very important, because on the basis of these facts, I'm going to decide whether to accept your guilty plea or not. I'm also going to use this in determining what your sentence is going to be. Do you understand that?

A. Yes, sir.

Q. So have you read this, or do you want me to read it to you now?

A. We done read it once.

MR. KOCH: This is what you and I went over.

THE DEFENDANT: We read it.

BY THE COURT:

Q. Are there any changes, corrections or additions you want to make to the provisions in those paragraphs?

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A. I don't think so.

Q. Is that information true and correct?

A. Yes, sir.

Q. Okay. And that's what you did to commit these crimes?

A. Yes, sir.

* * * * *

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* * * * *

THE COURT: All right. The Court finds that the defendant has knowingly, voluntarily and intelligently, with the advice of his attorney, entered a guilty plea to Counts 1, 2 and 3 of the indictment. The Court further finds that the elements required to support a conviction under the statutes charged in Counts 1, 2 and 3 have been satisfied.

The Court further finds that there is a sufficient factual basis to support the defendant's guilty pleas to Counts 1, 2 and 3 of the indictment. The Court further finds that, based on the defendant's answers under oath, that he has received the effective assistance of counsel from his attorney. So therefore, the Court will accept the guilty pleas to Counts 1, 2 and 3 of the indictment.

The Court will also accept the plea agreement that's been filed by the parties in this particular case. The Court will reserve to the defendant the right to appeal the sufficiency of the factual basis presented on Count 2 under the applicable

provisions of Rule 11 of the Federal Rules of Criminal Procedure.

So I have accepted your guilty plea to Counts 1, 2 and 3. I've also accepted the plea agreement, so I'm bound by it, you're bound by it, and the government is bound by it.

* * * * *

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* * * * *

CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

Date: December 12, 2005

/s/

ESTELLA O. CHAMPION, CCR, CRR

[SEAL]